IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 2 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

M/S. JYOTI LIMITED

Versus

THE COMMISSIONER OF INCOME TAX

Appearance:

1. INCOME TAX REFERENCE No. 2 of 1992

MR JP SHAH for Appellant No. 1

MR MR BHATT,SENIOR STANDING COUNSEL FOR

MR TANVISH U BHATT for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 14/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'B' has raised and referred the following questions of law under Section 256(1) of the Income Tax Act,1961 ('the Act') at the instance of the assessee.

"For A.Ys :- 1976-77, 1977-78, 1979-80 & 1980-81 :

Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the bank guarantee commission payment to Industrial Development Bank of India under deferred payment scheme was not allowable as revenue expenditure ?

For A.Ys:-1976-77 to 1980-81 :-
Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that commission paid to Managing Director was a part of remuneration for the purposes of applying limit of Rs.72,000/- laid down u/s.40(c) of the I.T.Act ?

For A.Y.1977-78 :-
Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that expenditure incurred on the issue of bonus shares was not allowable as revenue expenditure ?

For A.Y.1979-80 :-
Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that expenditure incurred on issue of shares was not allowable as a revenue expenditure ?

For A.Ys.1980-81 :-
Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that establishment of a Foundry at Halol was not expansion of the existing business but a new project and that expenditure on it was not allowable as revenue expenditure ?"

2 Heard Mr.Manish J.Shah, learned Advocate for the applicant-assessee and Mr.M.R.Bhatt, learned Senior Standing Counsel for Mr.Tanvish U.Bhatt on behalf of the respondent-revenue. Mr.Manish J.Shah, learned Advocate for the applicant states under instructions that the assessee is not desirous of pressing the question for assessment year 1980-81 pertaining to expenditure relatable to the Foundry at Halol. In the circumstances, the said question is left unanswered.

3 It is common ground between the parties that remaining four questions stand concluded by decision of the Apex Court and this Court. In the circumstances, it is not necessary to set out the facts and contentions of the parties in detail.

4 The question pertaining to allowability of bank guarantee commission as revenue expenditure for assessment years 1976-77, 1977-78, 1979-80 and 1980-81 stands answered in the negative i.e. in favour of the assessee and against the revenue in light of decision of the Apex Court in case of Additional Commissioner of Income Tax Vs.Akkamamba Textiles Ltd., (1997) 227 ITR 464.

5 The question pertaining to applicability of provision of Section 40(c) of the Act stands answered in the affirmative i.e. against assessee and in favour of the revenue in light of decision of this Court in case of Commissioner of Income Tax Vs. Rohit Mills Ltd. (1996) 219 ITR 228.

6 The question relating to allowability of expenditure incurred on issue of bonus shares as revenue expenditure for assessment year 1977-78 is answered in the affirmative i.e. against assessee and in favour of the revenue in light of decision of this Court in case of Commissioner of Income Tax Vs. Ambica Mills Ltd.,(2000) 244 ITR 742.

7 The question regarding allowability of expenditure incurred on issue of shares for assessment year 1979-80 is answered in the affirmative i.e. against the assessee and in favour of the revenue in light of decision of Apex Court in case of Brooke Bond India Ltd. Vs. Commissioner of Income Tax, (1997) 225 ITR 798.

8 The reference stands disposed of accordingly. There shall be no order as to costs.

(D.A.Mehta, J)

(H.N.Devani, J)

m.m.bhatt